

BellSouth also points out that it does not charge CLECs reciprocal compensation for its FX service.

A recent FCC decision recently held that certain types of traffic are excluded from the reciprocal compensation requirements of the Federal Act. *In re: Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket 98-98, and *In re: Intercarrier Compensation for ISP-Bound Traffic*, CC Docket 99-68 (April 27, 2001) ("Reciprocal Compensation Order"). BellSouth argues that FX traffic is within the category of calls that the FCC excluded from the reciprocal compensation requirements. (BellSouth Brief, p. 12).

Finally, BellSouth directs the Commission's attention to the decisions of other state commissions that have considered this issue and determined that reciprocal compensation is not due for this type of traffic. Specifically, BellSouth references state commissions in Texas, Illinois, South Carolina, Kentucky and Tennessee.

BellSouth offered a compromise position on this issue. BellSouth testified that it would offer CLECs the option to treat calls within the LATA as local for purposes of interconnection and reciprocal compensation. (Tr. 184-85).

2. *AT&T*

AT&T argues that FX traffic should be rated based on the NPA-NXX assigned to the customer, rather than the physical location of the customers. This is consistent with the toll and local rating. (AT&T Brief, p. 28). AT&T states further that it does not cost BellSouth any more to terminate calls to FX-type customers. *Id.* at 29. AT&T argues that intercarrier compensation arrangements for FX-type service should be the same as the arrangements for wireless service, where the BellSouth pays reciprocal compensation for BellSouth originated traffic regardless of the physical location of the wireless customer. *Id.* at 29-30.

3. *BroadRiver*

BroadRiver states that "a CLEC must retain the unrestricted and unilateral right to assign its NPA/NXX codes to its customers." (BroadRiver Brief, p. 4). BroadRiver also states that reciprocal compensation should be due CLECs for terminating calls that originated within the same LATA as the CLEC POI, where the calls are terminated. *Id.*

4. *Global Naps*

Global Naps states that it would agree to an arrangement in which if a CLEC chooses to limit local calls for the purposes of interconnection and reciprocal compensation to calls that originate and terminate within the same BellSouth local calling area, and chooses to have access charges apply to calls between BellSouth and CLEC customers in different local calling areas, then FX traffic would be treated in accordance with these choices. (Global Naps Brief, p. 19). It should also be the CLEC's prerogative to choose to have all intraLATA circuit-switched traffic

treated as local for purposes of interconnection. If a CLEC makes this decision, then reciprocal compensation should apply for FX traffic. *Id.* at 19-20.

5. *Sprint*

Sprint's position is that an ILEC should not be allowed to restrict a CLEC's ability to assign NPA/NXX codes to its end-users. Sprint states that ILECs and CLECs should share the transport costs between the virtual POI in a local calling area and the physical POI. (Sprint Brief, p. 9).

6. *WorldCom*

WorldCom claims that BellSouth's proposal will provide BellSouth with an unfair competitive advantage. (WorldCom Brief, p. 12). WorldCom argues that the test for whether a call is local or not should be based on the originating and terminating NPA/NXXs. WorldCom states that this test is consistent with the industry standard for determining the jurisdiction of traffic. *Id.*

B. Discussion

While this issue is phrased in terms of whether BellSouth should be entitled to put restrictions on a CLEC's ability to assign NPA/NXX codes for its customers, the underlying dispute is whether reciprocal compensation should apply to Virtual FX traffic. BellSouth is not attempting to prohibit CLECs from assigning to their customers NPA/NXX codes associated with a different local calling area, but BellSouth is not willing to pay reciprocal compensation to CLECs for terminating Virtual FX traffic. This dispute turns on the question of what determines whether a call is local. If the physical location of the foreign exchange customer governs, then Virtual FX traffic is not a local call and access charges are due. If it is the end-user's phone number that dictates whether a call is local, then reciprocal compensation should be paid for FX traffic.

The first argument BellSouth raises in its Brief is that the FX traffic does not originate and terminate within the same local calling area. (BellSouth Brief, p. 10). Although questioning its relevance, no party disputed the truth of this assertion. The Georgia Act defines "local exchange services" to mean "services offered for the transmission and utilization of two-way interactive communications and associated usage with the local calling area." O.C.G.A. § 46-5-162(11). The Georgia Act defines "local interconnection services" to mean "that part of switched interconnection service provided for the purpose of originating or terminating a call which *originates and terminates within the local calling area.*" O.C.G.A. § 46-5-162(12) (emphasis added). Since Virtual FX traffic does not originate and terminate within the same local calling area, it does not meet the definition of a local interconnection service.

The Georgia Act's definitions of the terms "switched access" and "toll service" establish that access charges, not reciprocal compensation are due for Virtual FX traffic. "'Toll service' means the transmission of two-way interactive switched communications between local calling areas." O.C.G.A. § 46-5-162(19). Virtual FX traffic travels between local calling areas, and

falls within the definition of a toll service. "Switch access" means that part of switched interconnection service provided for the purpose of originating or terminating a toll service." O.C.G.A. § 46-5-162(14). As a toll service, switched access would apply to Virtual FX calls.

Determining the nature of Virtual FX traffic based on the physical location of the callers is consistent with the end-to-end analysis endorsed by the FCC. The FCC has stated that "both court and [FCC] decisions have considered the end-to-end nature of the communications more significant than the facilities used to complete such communications." *In the Matter of Teleconnect Company v. The Bell Telephone Company of Pennsylvania*, 10 FCC Rcd 1626, 1995 FCC LEXIS 966 (1995); *aff'd sub nom. Southwestern Bell Tel. Co. v. FCC*, 116 F.3d 593 (D.C. Cir. 1997); see, e.g., Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 99-68, 10. Application of an end-to-end analysis to Virtual FX calls focuses on this traffic travelling between local calling areas, and leads to a conclusion that reciprocal compensation is not due for these calls.

The conclusion that access charges are due for Virtual FX is not inconsistent with the Commission's previous decisions in cases involving calls to internet service providers ("ISPs").⁷ In deciding whether the parties to interconnection agreements were obligated to pay reciprocal compensation for ISP-traffic, the Commission considered whether an ISP call involved one call or two. The Commission determined that two calls took place. The first call was the one placed by the BellSouth customer that dialed the NPA-NXX number within the same local calling area. The Commission found that this call was terminated once delivered to the telephone exchange service number. (See, e.g., Docket No. 8196-U; *In Re: Complaint of MFS Intelenet of Georgia, Inc. Against BellSouth Telecommunications, Inc., and Request for Immediate Relief*, Order Affirming and Modifying the Hearing Officer's Decision). The Commission decided that the ISP providing access to the packet-switched Internet was irrelevant to whether the first call was terminated locally. (See, e.g., Docket No. 6865-U; *In Re: Petition of MCImetro for Arbitration of Certain Terms and Conditions of Proposed Agreement with BellSouth Telecommunications, Inc. Concerning Interconnection and Resale Under the Telecommunications Act of 1996*; Order Deciding Complaint, December 28, 1998). The Commission's determination that the call outside the local calling area was a separate call was crucial to the Commission's determination that the call from the BellSouth customer to the ISP was local. That the Commission entered into this analysis demonstrates that the physical location where the call was terminated was relevant to the whether reciprocal compensation was due.

The Commission finds that reciprocal compensation is not due for Virtual FX traffic. The Commission also finds that consistent with its own testimony in this proceeding, BellSouth should offer CLECs the option to treat intraLATA calls as local for purposes of interconnection and reciprocal compensation.

⁷ In several dockets, the Commission decided that ISP-traffic is jurisdictionally local. The FCC recently issued its *Reciprocal Compensation Order*, in which it decided that ISP-bound traffic is not subject to the reciprocal compensation obligations of 47 U.S.C. 251(b)(5). The relevance of the ISP cases to the issue in this proceeding is limited to that in both the ISP cases and this docket, the Commission considered the physical location where the call originated and terminated in its determination of whether the call constituted local traffic.

III.
ORDERING PARAGRAPHS

The Commission finds and concludes that the terms and conditions as discussed in the preceding sections of this Order should be adopted pursuant to Sections 251 and 252 of the Telecommunications Act of 1996 and Georgia's Telecommunications and Competition Development Act of 1995.

WHEREFORE, it is

ORDERED, that all findings conclusions, statements and directives made by the Commission and contained in the foregoing sections of this Order are hereby adopted as findings of fact, conclusions of law, statements of regulatory policy, and orders of this Commission.

ORDERED FURTHER, that pursuant to FCC orders, a CLEC may choose the point of interconnection, and may choose to interconnect with an incumbent's network at a single point within a LATA.

ORDERED FURTHER, that for calls that originate and terminate within the same local calling area, BellSouth is responsible for the costs of transporting its originating traffic to the CLEC's POI in the LATA, regardless of whether the CLEC's POI is in the same local calling area as the call originates and terminates.


ORDERED FURTHER, that reciprocal compensation is not due for Virtual FX traffic.

ORDERED FURTHER, that BellSouth shall offer CLECs the option of treating intraLATA calls as local for purposes reciprocal compensation.

ORDERED FURTHER, that a motion for reconsideration, rehearing, or oral argument or any other motion shall not stay the effective date of this Order, unless otherwise ordered by the Commission.

ORDERED FURTHER, that jurisdiction over these matters is expressly retained for the purpose of entering such further Order or Orders as this Commission may deem just and proper.


The above by action of the Commission in Administrative Session on the 23rd day of July, 2001.



Reece McAlister
Executive Secretary

8-15-01

Date



Lauren McDonald, Jr.
Chairman

08-15-01

Date

APPENDIX H

**Docket Number 14361-U, Generic Proceeding to
Review Cost Studies, Methodologies, Pricing
Policies, and Cost-Based Rates for
Interconnection and Unbundling of BellSouth
Telecommunications, Inc.'s Network Procedural
and Scheduling Order**

COMMISSIONERS:

LAUREN "BUBBA" McDONALD, JR., CHAIRMAN
ROBERT B. BAKER, JR.
DAVID L. BURGESS
BOB DURDEN
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Docket No. 14361-U

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PROCEDURAL AND SCHEDULING ORDER

In Re: Generic Proceeding to Review Cost Studies, Methodologies, Pricing Policies and Cost Based Rates for Interconnection and Unbundling of BellSouth Telecommunications, Inc.'s Network

BY THE COMMISSION:

On December 16, 2001, the Georgia Public Service Commission ("Commission") issued its Order in Docket No. 7061-U establishing cost-based rates applicable to BellSouth Telecommunications, Inc.'s ("BellSouth") interconnection and unbundling including the unbundled network elements, nonrecurring charges, collocation, and access to poles, ducts, conduits and rights-of-way. On February 1, 2000, the Commission issued its Order in Docket No. 10692-U establishing long-term pricing policies for combinations of Unbundled Network Elements (UNEs) and establishing recurring and nonrecurring rates for particular combinations of UNEs.

The February 1, 2000 Order directed BellSouth to file a revised Statement of Generally Available Terms and Conditions (SGAT) reflecting and implementing the rates and policies established by the Order and reflecting the unbundling requirements of the FCC's Third Report and Order. The Commission also ordered BellSouth to file additional cost studies for those loop/port and loop/transport combinations that were not in place at the time of the Commission Order in Docket No. 10692-U.

On March 2, 2000 and March 17, 2000, BellSouth filed the required cost studies and revised SGAT. On May 4, 2000, BellSouth filed with the Commission modifications to these cost studies, along with a new SGAT to reflect these modifications and to incorporate additional filings in other Commission proceedings. The revised SGAT was permitted to take effect pursuant to 47 U.S.C. § 252(f)(3).

In Docket Nos. 11853-U, the Commission established interim rates subject to true up for certain UNEs and UNE combinations. In this generic proceeding, the Commission will examine the cost of each UNE and interconnection service offered by BellSouth, including those for which rates were established in Docket Nos. 7061-U and 10692-U. The following procedural schedule is hereby adopted for this new generic cost proceeding:

October 1, 2001

BellSouth and other interested parties may file cost studies and Direct Testimony regarding issues in this docket. Accompanied therewith shall be an electronic version of the party's testimony, which shall be made on a 3.5" diskette using Microsoft Word® format for text documents and Excel® for spread sheets or other comparable electronic format. Under no circumstances should an electronic filing consist of more than four (4) files, including attachments. Cost studies may be filed on CD Rom. This filing shall be made at the office of the Executive Secretary, Georgia Public Service Commission, 244 Washington Street, S.W., Atlanta, Georgia 30334-5701.

October 30, 2001

The Commission will conduct a technical workshop at which time BellSouth and other interested parties that filed cost studies can present an overview of the Cost Models relied upon to generate forward-looking costs.

November 9, 2001

BellSouth and other interested parties file Rebuttal Testimony in response to issues raised in the Direct Testimony. Accompanied therewith shall be an electronic version of the party's filing, which shall be made on a 3.5" diskette using Microsoft Word® format for text documents and Excel® for spread sheets. Under no circumstances should an electronic filing consist of more than four (4) files, including attachments. This filing shall be made at the office of the Executive Secretary, Georgia Public Service Commission, 244 Washington Street, S.W., Atlanta, Georgia 30334-5701.

November 29, 2001

BellSouth and other interested parties file Surrebuttal Testimony in response to issues raised in the Rebuttal Testimony. Accompanied therewith shall be an electronic version of the party's filing, which shall be made on a 3.5" diskette using Microsoft Word® format for text documents and Excel® for spread sheets. Under no circumstances should an electronic filing consist of more than four (4) files, including attachments. This filing shall be made at the office of the Executive Secretary, Georgia Public Service Commission, 244 Washington Street, S.W., Atlanta, Georgia 30334-5701.

December 10-12, 2001

At 10:00 a.m., the Commission will commence hearings for Docket No. 14361-U beginning with the testimony of any public witnesses pursuant to O.C.G.A. § 46-2-59(g), and the hearing of any appropriate motions. After these preliminary matters, the Commission will conduct hearings on the testimony filed by BellSouth and the intervenors.

January 11, 2002

All parties are to file an original and fifteen (15) copies of closing briefs, orders or recommendations. Accompanied therewith shall be an electronic version of a party's filing, which shall be made on a 3½ inch diskette using Microsoft Word® format for text documents and Excel® for spread sheets.

Additional Information

For each cost study, the party submitting the cost study shall provide comprehensive and complete work papers that fully disclose and document the process underlying the development of each of its economic costs, including the documentation of all judgments and methods used to establish every specific assumption employed in each cost study. The work papers must clearly and logically represent all data used in developing each cost estimate, and must be so comprehensive as to allow others initially unfamiliar with the studies to replicate the methodology and calculate equivalent or alternative results using equivalent or alternative assumptions. The work papers must be organized in such a manner as to clearly identify and document all source data and assumptions, including investment, expense, and demand data assumptions.

Discovery

The nature of the information likely to be brought forward in this proceeding, such as cost study and methodology information, is highly technical and detailed in nature. Therefore, this is an appropriate proceeding in which the Commission may exercise its discretion to allow the parties to use discovery to obtain and exchange information. This is an exception to the usual practice and procedure in Commission proceedings. Allowing discovery in this docket should also assist the parties in negotiating the complex issues and in preparing and presenting unresolved issues for Commission resolution in this docket. In addition, the Commission Staff is hereby appointed agents of the Commission for discovery purposes pursuant to O.C.G.A. § 46-2-57. In that capacity, the Commission Staff has the authority to conduct discovery using any methods, including but not limited to informal discovery workshops.

The Commission finds and concludes that it is appropriate to permit the parties to conduct discovery in this proceeding, subject to the following procedures. Parties should endeavor to keep their discovery requests focused on the issues in this docket, and to use written data requests in the first instance to obtain the data, information, or admissions they may seek. Discovery requests shall be served electronically, and all discovery requests must be served prior to November 2, 2001. Objections to discovery shall be filed within 10 days after receipt of the discovery. Responses to discovery requests are to be provided to the requesting party as soon as possible, and shall be provided no later than 14 days after receipt of the request. Two copies of each response to discovery requests shall be filed with the Commission, but shall not be considered part of the evidence of record (unless and until explicitly brought into the evidence of record as part of the formal hearing process). Written discovery shall be limited to 50 requests,

additional written discovery or additional depositions are necessary, the party shall file a motion with the Commission, explaining in detail the facts upon which additional discovery is required and why such facts could not be discovered through other means.

Copies of Pleadings, Filings and Correspondence

Parties shall file the original plus 15 copies, as well as an electronic version (Word format for text documents), of all documents with the Commission's Executive Secretary no later than 4:00 p.m. on the date due. However, only two copies need to be filed for discovery responses. In addition, copies of all pleadings, filing, correspondence, and any other documents related to, and submitted in the course of this docketed matter (except for discovery requests and responses) shall be served upon the other parties as well as upon the following individuals in their capacities as indicated below:

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Kristy Holley, Director
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Record

The parties shall be responsible for bringing before the Commission all evidence that they wish to have considered in this proceeding. The Commission may also require the parties to provide any additional information that the Commission considers useful and necessary in order to reach a decision. Any party filing documents or presenting evidence that is considered by the source of the information to be a "trade secret" under Georgia law, O.C.G.A. § 10-1-761(4), must comply with the rules of the Commission governing such information. See GPSC Rule 515-3-1-.11 Trade Secrets (containing rules for asserting trade secret status, filing both under seal and with public disclosure versions, use of protective agreements, petitioning for access, and procedures for challenging trade secret designations). Responses to discovery will not be considered part of the record unless formally introduced and admitted as exhibits.

WHEREFORE, it is

ORDERED, that the Commission hereby adopts the procedures, schedule, and statements regarding the issues set forth within the Procedural and Scheduling Order.

ORDERED FURTHER, that a motion for reconsideration, rehearing, oral argument, or any other motion shall not stay the effective date of this Order, unless otherwise ordered by the Commission.

ORDERED FURTHER, that jurisdiction over this matter is expressly retained for the purpose of entering such further Order(s) as this Commission may deem just and proper.

The above by action of the Commission in Administrative Session on the 21st day of August 2001.



Reece McAlister
Executive Secretary

8-23-01
DATE



Lauren McDonald, Jr.
Chairman

08-23-01
DATE

APPENDIX I

APPENDIX I

**Docket Number 11853-U, Petition of AT&T
Communications and Teleport Communications
and Teleport Communications of Atlanta, Inc.
for Arbitration of Certain Terms and Proposed
Agreement with BellSouth Telecommunications,
Inc. Under the Telecommunications Act of 1996
Order**

COMMISSIONERS:

LAUREN "BUBBA" McDONALD, JR., CHAIRMAN
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DAVID L. BURGESS
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Docket No. 11853-U

In Re: Petition of AT&T Communications of the Southern States, Inc. and Teleport Communications Atlanta, Inc. for Arbitration of Certain Terms and Conditions of Proposed Agreement with BellSouth Telecommunications, Inc. Under the Telecommunications Act of 1996.

ORDER

Appearances

DOCKET# 11853
DOCUMENT# 46713

On behalf of AT&T Communications

Suzanne W. Ockleberry, Attorney

James J. Amouroux, Attorney

Marsna Rule, Attorney

On behalf of BellSouth Telecommunications, Inc.

Bennett Ross, Attorney

Douglas Lackey, Attorney

On behalf of the Commission Staff

Daniel Walsh, Attorney

On behalf of the Consumers' Utility Counsel

Kealin Culbreath, Attorney

BY THE COMMISSION:

On February 4, 2000, AT&T Communications of the Southern States, Inc., and Teleport Communications Atlanta, Inc. (collectively "AT&T") petitioned the Georgia Public Service Commission ("Commission") to arbitrate certain unresolved issues in the interconnection negotiations between AT&T and BellSouth Telecommunications, Inc.

I. JURISDICTION AND PROCEEDINGS

Under the Federal Telecommunications Act of 1996 (the Federal Act), State Commissions are authorized to decide the issues presented in a petition for arbitration of interconnection agreements. In addition to its jurisdiction of this matter pursuant to Sections 251

and 252 of the Federal Act, the Commission also has general authority and jurisdiction over the subject matter of this proceeding, conferred upon the Commission by Georgia's Telecommunications and Competition Development Act of 1995 (Georgia Act), O.C.G.A. §§ 46-5-160 *et seq.*, and generally O.C.G.A. §§ 46-1-1 *et seq.*, 46-2-20, 46-2-21 and 46-2-23.

The Commission approved an interconnection agreement between the parties for a three-year period, and the agreement was in effect until February 3, 2000. On August 30, 2000, the Commission issued an order scheduling hearings in this matter. Hearings were held before the Commission on October 30 and 31, 2000. On November 27, 2000, the parties filed briefs on the unresolved issues.

The Commission has before it the testimony, evidence, arguments of counsel and all appropriate matters of record enabling it to reach its decision.

II. FINDINGS AND CONCLUSIONS

1. Issue 1

Should calls to Internet Service Providers be treated as local traffic for the purposes of reciprocal compensation?

BellSouth argues that reciprocal compensation payments are not due because ISP-bound traffic is not local traffic. The Commission has found previously that ISP traffic is local in nature. *See* Docket Nos. 11901-U, 10854-U, 10767-U, 9281-U¹. While reserving its right to seek judicial review from this Commission finding, BellSouth states that it will abide by the Commission's decision in Docket No. 10767-U. In Docket No. 10767-U, the Commission directed the parties to track reciprocal compensation payments, "subject to a true-up mechanism approved by the Commission as warranted by the outcome of the FCC's Rule-Making in CC Docket No. 99-68 on ISP-bound traffic." (Order, p. 4 of 11).

However, subsequent to the Commission's order in Docket No. 10767-U, the Commission addressed this issue in Docket No. 10854-U. In its order in Docket No. 10854-U,

¹ Docket No. 11901-U: *Petition of MCI Metro Access Transmission Services, LLC and MCI WorldCom Communications, Inc. for Arbitration of Certain Terms and Conditions of Proposed Agreement with BellSouth Telecommunications, Inc. Concerning Interconnection and Resale Under the Telecommunications Act of 1996*; Docket No. 10854-U: *Petition for Arbitration of ITC/DeltaCom Communications, Inc. with BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996*; Docket No. 10767-U: *Petition by ICG Telecom Group, Inc. for Arbitration of an Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996*; Docket No. 9281-U *Complaint of e.spire Communications, Inc. Against BellSouth Telecommunications, Inc.*

the Commission ordered BellSouth to pay reciprocal compensation for calls to ISPs without the payments being subject to a true-up mechanism. (Order p. 7 of 13). The Commission noted that District of Columbia Circuit Court of Appeals decision vacating the FCC's Declaratory Ruling for "want of reasoned decision-making" with regard to the FCC's use of the "end-to-end" analysis returned the status of the issue to an open question for the Commission to decide. Consistent with the Commission's decision in Docket No. 10854-U, and subsequent orders addressing this issue, the Commission finds that BellSouth must pay reciprocal compensation on ISP-bound traffic and that those payments are not subject to a true-up mechanism.

2. Issue 7

What price (including deaveraged prices where appropriate should BellSouth be permitted to charge for the following combinations of elements?

**DS3 digital loop with DS3 dedicated interoffice transport.
4 wire DS1 local channel with DS1 interoffice transport**

DS3 local channel with DS3 interoffice transport

In Docket No. 10692-U, *Generic Proceeding to Establish Long-Term Pricing Policies For Unbundled Network Elements*, the Commission established recurring and nonrecurring rates for eight different pre-existing loop and transport combinations. The combinations at issue here, however, were not addressed in the Commission's order in that proceeding. BellSouth and AT&T each propose separate methodologies for setting rates for the above combinations.

BellSouth proposes that the Commission set the recurring rates for the three combinations at the sum of the stand-alone network element prices. (BellSouth Post-Hearing Brief, p. 4). The Commission established recurring rates for the stand-alone DS1 local channel and DS1 dedicated interoffice transport elements in Docket No. 7061-U, *Review of Cost Studies, Methodologies, and Cost-Based Rates for Interconnection and Unbundling of BellSouth Telecommunications Services*. For nonrecurring rates, BellSouth's proposal distinguishes between elements that are currently combined and elements that are not currently combined.² For those currently combined combinations, BellSouth proposes that the Commission establish the same nonrecurring rate that the Commission ordered in Docket No. 10692-U. BellSouth proposes a nonrecurring rate for combinations not currently combined at the sum of the stand-alone nonrecurring rates for the elements that make up each combination. (BellSouth Post-Hearing Brief, p. 4).

² In Docket No. 10692-U, the Commission found that FCC "Rule 315(b), by its own terms, applies to elements that the incumbent 'currently combines,' not merely elements which are 'currently combined.'" (February 1, 2000, Order, p. 11 of 23). The Order further explains that in ¶ 296 of the FCC's First Report and Order, the FCC stated that "the proper meaning of 'currently combines' is 'ordinarily combined within their network in the manner in which they are typically combined.'" *Id.* While the FCC stated that it would decline to address this issue in its Third Report and Order, it did not disavow the position it took in its First Report and Order. Therefore, the FCC's only interpretation of "currently combines" remains that which was stated in its First Report and Order.

AT&T argues that BellSouth bases its UNE rates on inappropriate cost model assumptions. AT&T states that BellSouth's proposals must be adjusted in order to comply with the FCC's forward-looking TELRIC costing standard. (AT&T Post-Hearing Brief, p. 48). Although AT&T proposes adjustments to BellSouth's proposals in this proceeding, AT&T states that it would not object to a generic proceeding "to address these and all other UNE rate issues which have arisen since the Commission issued its orders in Docket Nos. 7061-U and 10692-U." *Id.* at 48, Footnote 32.

The Commission finds that the most efficient and fair resolution to this issue is to commence a generic proceeding to establish permanent rates for the combined UNEs that have arisen since Docket No. 10692-U. In the interim, the Commission adopts the rates proposed by BellSouth, subject to a true-up.

3. Issue 8

What are the appropriate rates and charges (including deaveraged prices and recurring and nonrecurring prices where appropriate) for the following UNEs for which rates have not been established:

DS3 loops

DS3 dedicated interoffice transport

DS3 dedicated local channels

Dedicated local channels with interoffice transmission

DS0/DS1 multiplexers

DS1/DS3 multiplexers

BellSouth states that recurring and nonrecurring rates for DS3 loops, DS3 dedicated interoffice transport, DS3 dedicated local channels, DS0/DS1 multiplexers, and DS1/DS3 multiplexers were filed with the Commission in Docket No. 7253-U, *BellSouth Telecommunications, Inc. Statement of Generally Available Terms and Conditions Under Section 252(f) of the Telecommunications Act of 1996*. AT&T proposes modifications to BellSouth's methodologies that it asserts are more consistent with the TELRIC philosophy. (Prefiled Direct Testimony of Jeffrey King, p. 9).

Similar to Issue 7, this issue deals with combinations that have arisen since the Commission's order in Docket No. 10692-U. Accordingly, the Commission will address these combinations in the context of a generic proceeding. In the interim, and subject to a true-up mechanism, the Commission will establish the rates for these combinations consistent with BellSouth's proposal.

Similar to Issue 7, this issue deals with combinations that have arisen since the Commission's order in Docket No. 10692-U. Accordingly, the Commission will address these combinations in the context of a generic proceeding. In the interim, and subject to a true-up mechanism, the Commission will establish the rates for these combinations consistent with BellSouth's proposal.

4. Issue 9

Under what rates, terms, and conditions may AT&T purchase network elements or combinations to replace services currently purchased from BellSouth tariffs?

The primary question in Issue 9 is whether BellSouth should be entitled to enforce the fee for early termination provided for in its contracts with some of its retail customers. The customer receives favorable rates in exchange for this provision. BellSouth characterizes the issue as one of simple fairness. Since the customer received the benefit of the reduced rates, the customer should be held to its contractual obligations. It is inequitable to allow the customer to benefit from reduced rates under the contract, benefit again from switching to AT&T, and then not pay the termination fees it agreed to pay in exchange for these benefits. (BellSouth Post-Hearing Brief, p. 10). AT&T argues that the termination liability fees should not be paid because service has not been terminated. AT&T argues that it "is merely seeking to have the current service converted to a different rate structure." (AT&T Post-Hearing Brief, p. 64).

In its February 1, 2000, Order in Docket No. 10692-U, the Commission directed BellSouth to provide loop/transport combinations to CLECs. The Commission ordered the combinations in question to be made available statewide and free from any restrictions not mentioned in the Commission order. (Commission Order, p. 22).³ Since the Commission issued its order in Docket No. 10692-U, AT&T has been seeking to replace the tariffed services with the UNEs. (Tr. 67). In a footnote to its UNE Remand Order, the FCC stated that "any substitution of unbundled network elements for special access would require the requesting carrier to pay any *appropriate* termination penalties required under volume or term contracts." (p. 221, Footnote 985) (emphasis added). At the time that AT&T selected BellSouth's tariffed services, it did not have the option to order UNEs from BellSouth. A CLEC that has had to wait for the availability of UNEs should not be penalized for taking advantage of this option. The Commission finds, therefore, that a charge against AT&T as the customer for replacing tariffed services that it agreed to prior to BellSouth offering UNEs is not an "appropriate" termination penalty. AT&T shall not be required to pay termination liability fees when it converts special

³ The combinations addressed were: 2-wire voice grade extended loop with DS1 Dedicated Interoffice Transport; 4-wire voice grade extended loop with DS1 Dedicated Interoffice Transport; 4-wire 56 or 64 KBPS extended digital loop with Dedicated DS1 Interoffice Transport; Extended 2-wire VG Dedicated Local Channel with Dedicated DS1 Interoffice Transport; Extended 4-wire VG Dedicated Local Channel with Dedicated DS1 Interoffice Transport; Extended 4-wire DS1 Digital Loop with Dedicated DS1 Interoffice Transport; Extended 4-wire DS1 Digital Loop with Dedicated DS3 Interoffice Transport; and, Extended DS1 Dedicated Local Channel with Dedicated DS3 Interoffice Transport.

At the March 6, 2001, Administrative Session, the Commission voted to direct the parties to meet in an effort to agree to a date after which AT&T would owe termination charges for early termination of the contract. The parties were directed to try to agree to a date by March 13, 2001. The Commission also voted at the Administrative Session that if the parties were unable to agree, then the Commission would set the date certain for termination liability at February 1, 2000, which is the date that the Commission issued its order in Docket No. 10692-U. The Commission subsequently has been informed that the parties have been unable to agree upon a date. (BellSouth Letter to the Commission, dated March 21, 2001). Accordingly, AT&T shall not be required to pay termination liability fees when it converts special access services to UNEs for those instances when it began taking the special access services prior to February 1, 2000, the date of the Commission order in Docket No. 10692-U. Finally, if AT&T wins a BellSouth customer that is under a volume and term contract, BellSouth can pursue recovery from that customer of any termination liability fees.

5. Issue 10

How should AT&T and BellSouth interconnect their networks in order to originate and complete calls to end-users?

Under Section 252(c)(2) of the Federal Act, BellSouth has the duty to provide CLECs with interconnection with its network "at any technically feasible point within the carrier's network." The dispute among the parties concerns which party must bear the costs of transporting traffic from a BellSouth local calling area to the point of interconnection established by AT&T.

This issue has arisen in other arbitration proceedings before the Commission. In Docket No. 11901-U, the Commission ordered the initiation of a generic proceeding to address points of interconnection and virtual FX.⁴ Accordingly, the Commission finds it prudent not to rule on this issue in the context of this proceeding.

6. Issue 11

What terms and conditions, and what separate rates if any, should apply for AT&T to gain access to and use BellSouth facilities to serve multi-unit installations?

AT&T has requested to purchase from BellSouth subloop facilities in order to provide service to residential and business tenants in multi-dwelling units. This issue concerns how AT&T will access the subloop facilities, which consist of network terminating wire (NTW) and intrabuilding network cable (INC). BellSouth provides service to multi-tenant buildings through different means depending on whether the building is a garden-style apartment building or a high rise building. For garden-style apartment buildings, "BellSouth cross-connects the facilities that it has run to the building with . . . NTW." (BellSouth Post-Hearing Brief, p. 18). For high rise buildings, BellSouth performs this service using INC. The INC then cross-connects with the

⁴ The Commission has scheduled hearings in Docket No. 13542-U, Generic Proceeding on Point of Interconnection and Virtual FX Issues, for May 1-4, 2001.

NTW on each floor of the high rise building, and "[t]he NTW then runs to the Network Interface Device (NID) located on each tenant's premises." *Id.* at 19.

In the Third Report and Order, the FCC found that incumbent LECs, such as BellSouth, "must provide unbundled access to subloops nationwide, where technically feasible." Third Report and Order, ¶ 205. The FCC defined "subloops" as "portions of the loop that can be accessed at terminals in the incumbent's outside plant." Third Report and Order, ¶ 206; Rule 319(a)(2).

The parties dispute whether BellSouth can require AT&T to access the facilities through an intermediary access terminal. BellSouth states the concern that if AT&T had access to its terminal, then every CLEC would be entitled to the same access. BellSouth claims that this would create administrative and security problems because BellSouth would have no way of knowing which of its facilities a particular CLEC was using. (BellSouth Post-Hearing Brief, p. 19). AT&T charges that the intermediary access terminal results in discrimination because AT&T has to pay for the terminal in order to access the same subloop elements that BellSouth can access without this additional charge. (AT&T Post-Hearing Brief, p. 30).

The FCC has stated that incumbents must permit CLECs to have direct access to their equipment once inside the building. *Deployment of Wireline Service Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, First Report and Order and Further Notice of Proposed Rulemaking, FCC 99-148, et al. (March 31, 1999) ¶ 42. Further, the FCC stated that incumbent LECs "may not require competitors to use an intermediate interconnection arrangement in lieu of direct connection to the incumbent's network if technically feasible, because such intermediate points of interconnection simply increase collocation costs without concomitant benefit to incumbents." *Id.* As stated above, BellSouth's arguments for the intermediary access terminal focus on record keeping and security, rather than feasibility.

CLEC access to BellSouth facilities in multi-unit installations was also an issue in Docket No. 10418-U, *Interconnection Agreement Between MediaOne Telecommunications of Georgia, LLC and BellSouth Telecommunications, Inc.* In that proceeding, the Commission determined that NTW is a UNE. (Order, page 4 of 10). The Commission also found that interconnection at the minimum point of entry technically feasible. *Id.* at 6. In its Third Report and Order, the FCC also determined that "lack of access to unbundled subloops materially diminishes a requesting carrier's ability to provide services that it seeks to offer." ¶ 205. The FCC concluded that "access to subloop elements is likely to be the catalyst that will allow competitors, over time, to deploy their own complementary subloop facilities, and eventually to develop competitive loops." *Id.*

Any resolution of this issue must, therefore, encourage competition and provide all parties with a clear point of demarcation. For CLECs to have to bear access costs that BellSouth does not incur is discriminatory and will not encourage competition. The same serving arrangement that the Commission approved for the garden-style apartments in Docket No. 10418-U should also apply for the wiring closet arrangement. BellSouth shall pay for the intermediary access terminal. AT&T shall provide BellSouth with a forecast of the number of customers that it is seeking to serve in the multi-dwelling unit. In addition, the Commission

approves a one-tier rate structure in which once AT&T receives access to the NTW, it also receives access to the riser cable. This will reduce AT&T's costs and reduce the delay to AT&T's customer. This arrangement shall be reciprocal, so that when AT&T is the primary provider of service in a multi-dwelling unit, and BellSouth wishes to serve a customer in that unit, BellSouth can access through the same type of serving arrangement on the same terms and conditions.

7. Issue 14

Should BellSouth be allowed to aggregate lines provided to multiple locations of a single customer to restrict AT&T's ability to purchase local circuit switching at UNE rates to serve any of the lines of that customer?

FCC Rule 51.319(c)(2) sets forth an exception to an ILEC's general obligation under FCC Rule 51.311, to provide nondiscriminatory access to local circuit switching capability and local tandem switching capability. FCC Rule 51.319(c)(2) states that "an incumbent LEC shall not be required to unbundle local circuit switching for requesting telecommunications carriers when the requesting telecommunications carrier serves end-users with four or more voice grade (DSO) equivalents or lines." This exception is subject to the ILEC providing nondiscriminatory access to combinations of unbundled loops and transport throughout Density Zone 1. In addition, for the exception to apply, the ILEC's local circuit switches must be located in the top 50 Metropolitan Statistical Area (MSA), and in Density Zone 1.

At issue between the parties is whether this exception applies when the customer's four lines are not all located at the same premises. AT&T argues that the exception is not intended to apply to such a situation. The FCC stated that the exception was intended to develop competition "particularly for large business customers or other users with substantial telecommunications needs." *UNE Remand Order* ¶ 255. AT&T argues that to allow BellSouth to aggregate lines would be to "escape its obligation to provide unbundled local switching." (AT&T Post-Hearing Brief, p. 46).

BellSouth responds that the availability of EELs makes the geographic location of a customer's lines irrelevant. (BellSouth Post-Hearing Brief, p. 23). Since BellSouth would have to provide EELs in order to take advantage of the exception, AT&T would have the ability to use EELs to connect customers to AT&T's switch. *Id.* at 24. BellSouth argues that the intent of the rule is to distinguish between mass markets and the medium to large business market, and that therefore, the exception should be found to apply regardless of the location of the lines. *Id.*

The Commission is not persuaded by AT&T's argument that the FCC did not intend the exception to apply in cases where the lines are located at different premises. The plain language of the FCC Rule 51.319(c)(2) states that an ILEC's obligation does not apply to the circumstances at issue. The Commission finds that BellSouth should be allowed to aggregate lines provided to multiple locations of a single customer to restrict AT&T's ability to purchase local circuit switching at UNE rates to serve any of the lines of that customer.

8. Issue 15

Should AT&T be permitted to charge tandem rate elements when its switch serves a geographic area comparable to that served by BellSouth's tandem switch?

This issue concerns whether AT&T should receive reciprocal compensation at the tandem rate for traffic transported and terminated via its switch. The legal question is whether the CLEC must demonstrate both that its switch serves a comparable geographic area and that it performs a similar functionality. FCC Rule 711(a)(3) provides:

Where the switch of a carrier other than an incumbent LEC serves a geographic area comparable to the area served by the incumbent LEC's tandem switch, the appropriate rate for the carrier other than the incumbent LEC is the incumbent LEC's tandem interconnection rate.

However, the FCC has also directed state commissions to consider whether new technologies perform similar functions to an ILEC's tandem switch. (*Local Competition Order*, ¶1090).

The Commission has previously held that a CLEC must demonstrate that its switch serves a comparable geographic area and that it performs similar functionality. (*See*, Docket No. 10767-11 *In re: Petition by ICG Telecom Group, Inc. for Arbitration of an Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996*).

The evidence supports that AT&T's switches cover the same geographic area as BellSouth's tandem switches. (Talbot Direct Testimony at 21-22; DLT-16). Although AT&T disputes that its switches must pass a functionality test, it asserts that its switch performs the same functions as BellSouth's switch. AT&T's switches route interLATA traffic, direct trunking has been established to enable calls between AT&T customers to be completed across the LATA or across the state solely on AT&T's network. In addition, AT&T has established direct trunking to each BellSouth tandem so that calls between AT&T and BellSouth customers do not need to transit multiple switches. (AT&T Post-Hearing Brief, p. 20). The Commission finds that AT&T's tandem switch performs the same functions as BellSouth's switch. Therefore, AT&T is permitted to charge tandem rate elements.

9. Issue 16

What are the appropriate means for BellSouth to provide unbundled local loops for provision of DSL service when such loops are provisioned on digital loop carrier facilities?

This issue was addressed by parties in Docket No. 11900-U, *Investigation of BellSouth Telecommunications, Inc.'s Provision of Unbundled Network Elements for the xDSL Service Providers*. The Commission will reach a decision on this matter in the context of that proceeding.

10. **Issue 21**

What is the appropriate treatment of outbound voice calls over internet protocol ("IP") telephony, as it pertains to reciprocal compensation?

The preliminary question to answer on this issue is whether the Commission has jurisdiction to decide whether switched access charges should apply to IP telephony. AT&T argues that the FCC has exclusive jurisdiction over interstate telecommunication issues, and that the FCC has decided not to assess switched access charges to these kinds of calls. (AT&T Post-Hearing Brief, p. 61). BellSouth argues that since the call in question is a long distance call, the Commission should determine that reciprocal compensation is not due. (BellSouth Post-Hearing Brief, p. 42).

In Docket No. 11644-U, *Petition of BellSouth Telecommunications, Inc. For Arbitration of an Interconnection Agreement With Intermedia Communications, Inc. Pursuant To Section 252(b) of the Telecommunications Act Of 1996*, the issue arose as to whether switched access charges should apply to IP calls. In that proceeding, the Commission adopted the Commission Staff's recommendation to defer ruling on the issue until it has had an opportunity to consider the issue further.⁵ (Order, p 14 of 17). Consistent with its order in that proceeding, the Commission defers ruling until it can further consider the issue.

11. **Issue 25**

When AT&T and BellSouth have adjoining facilities in a building outside BellSouth's central office, should AT&T be able to purchase cross connect facilities to connect to BellSouth or other CLEC networks without having to collocate in BellSouth's portion of the building?

A condominium arrangement is a central office building that is owned and shared by both BellSouth and AT&T, such that AT&T and BellSouth offices would occupy separate areas of the same building. This arrangement resulted from the divestiture of AT&T, and is unique to AT&T among CLECs. AT&T is asking to use the condominium arrangement to avoid having to collocate through BellSouth's central office. BellSouth's objection is that it would provide AT&T with an advantage over other CLECs. (Tr. 280-281).

The Commission finds that it would not benefit competition to allow AT&T to benefit from its previous relationship with BellSouth. Therefore, the Commission adopts BellSouth's position on this issue.

⁵ In Docket No. 11901-U, *Petition of MCI Metro Access Transmission Services, LLC and MCI WorldCom Communications, Inc. for Arbitration of Certain Terms and Conditions of Proposed Agreement with BellSouth Telecommunications, Inc. Concerning Interconnection and Resale Under the Telecommunications Act of 1996*, the Commission also deferred ruling on this issue. (Order, p.12 of 28).

12. Issue 26

Is conducting a statewide investigation of criminal history records for each AT&T employee or agent being considered to work on a BellSouth premises a security measure that BellSouth may impose on AT&T?

At issue is whether a statewide investigation of criminal history records for AT&T employees and agents working on BellSouth's premises falls within a reasonable security arrangement as intended in the FCC's *First Report and Order and Further Notice of Proposed Rulemaking, In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, 14 FCC Rcd 4761 (rel. March 31, 1999) ("Advanced Services Order"). AT&T argues that it does not. Instead, AT&T asserts that BellSouth's position is intended to stall competition without a concomitant benefit to security. (AT&T Post-Hearing Brief, p. 92).

In determining whether BellSouth's security concerns are legitimate, it is instructive to examine the measures BellSouth takes with regard to its own employees. BellSouth sponsored testimony that it performs criminal background checks on its employees prior to hiring. (Pre-filed Testimony of W. Keith Milner, p. 55). AT&T does not dispute this testimony. (Tr. 285). BellSouth has agreed to limit the criminal background checks to only those AT&T employees who have been hired by AT&T within the last five years. (Tr. 285).

The Commission finds that it is reasonable for BellSouth to require criminal background checks on AT&T employees with less than five years of service. However, BellSouth must provide to AT&T the criminal background checks that it performs on its own employees to demonstrate that the checks on AT&T's employees are no more extensive or burdensome.

13. Issue 31

Has BellSouth provided sufficient customized routing in accordance with State and Federal law to allow it to avoid providing Operator Services/Directory Assistance ("OS/DA") as a UNE?

This issue involves a dispute between the parties over whether the methods of customized routing provided for by BellSouth are adequate. As explained by BellSouth witness, W. Keith Miller, "customized routing allows calls from a CLEC's customer served by a BellSouth switch to reach the CLEC's choice of operator service or directory assistance platform rather than BellSouth's operator service and directory assistance platforms." (Tr. 894).

The FCC has ordered ILECs to provide operator services and directory assistance ("OS/DA") as an unbundled network element, unless they provide "customized routing or a compatible signaling protocol." *In re: Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking (released January 14, 2000). BellSouth provides two means of customized routing: the Line Class Code ("LCC") method and the Advanced Intelligent Network ("AIN") solution. AT&T disputes whether either of these methods are

viable. Therefore, AT&T's position is that BellSouth should be obligated to provide OS/DA as a UNE.

In its order in Docket No. 11901-U, the Commission determined that BellSouth met the requirement for customized routing through the LCC and AIN methods. Consistent with its decision in Docket No. 11901-U, the Commission finds that BellSouth has provided sufficient customized routing to avoid providing OS/DA as a UNE. Also consistent with its previous order, the Commission finds that BellSouth is required to file an implementation schedule for Originating Line Number Screening ("OLNS") within fifteen (15) days of the issuance of the Commission order. The availability of OLNS at reasonable rates should reduce AT&T's concerns on this matter.

14. Issue 32

What procedure should be established for AT&T to obtain loop-port combinations (UNE-P) using both Infrastructure and Customer Specific Provisioning?

Issue 32 involves the process for ordering operator services and directory assistance. AT&T's proposal is that it would place with BellSouth a "footprint" order. The footprint order "identifies and establishes the trunking and routing required to direct customers' OSDA calls to one or more platforms chosen by AT&T for the geographic footprint area." (Tr. 489). Once the necessary trunking and routing has been established, AT&T could submit to BellSouth local service requests ("LSRs"), which would identify for BellSouth which OS/DA platform to use for that customer. The process would allow OS/DA calls from AT&T customers to reach the platform chosen by AT&T. AT&T plans to offer AT&T-branded or unbranded BellSouth OS/DA or AT&T OS/DA platforms. (AT&T Post-Hearing Brief, p. 73).

The parties agree that AT&T is entitled to have OS/DA calls from AT&T customers routed to the platform of its choice. The disagreement between the parties concerns whether this entitlement is limited to situations in which AT&T wants to use a single routing plan for the orders it submits. BellSouth argues that the FCC limited BellSouth's obligation to where the CLEC wants to use a single routing plan. (BellSouth Post-Hearing Brief, p. 50).

In *FCC Louisiana II Order*, the FCC speaks directly to instances in which the CLEC has multiple routing plans.

If, however, a competitive LEC has more than one set of routing instructions for its customers, it seems reasonable and necessary for BellSouth to require the competitive LEC to include in its order an indicator that will inform BellSouth which selective routing pattern to use.

FCC Second Louisiana Order, ¶ 224.

The FCC does not limit CLECs to a single routing option; it merely requires the CLEC to include in its LSR an indicator. AT&T has stated that it is "more than willing" to include an indicator in its customer-specific orders to inform BellSouth which routing option to